STATE OF MICHIGAN

COURT OF APPEALS

ALLSTATE INSURANCE COMPANY,

Plaintiff-Appellee,

V

STACY REINHARDT,

Defendant-Appellant,

and

CARLA S. LAROCHE,

Defendant.

UNPUBLISHED
November 6, 2001

No. 224205
Bay Circuit Court
LC No. 99-003130-CK

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

MEMORANDUM.

Defendant Stacy Reinhardt appeals as of right from the trial court's order granting summary disposition to plaintiff Allstate Insurance Company in this denial of coverage matter. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The "occurrence" policy at issue here does not define the term "accident." The courts, applying the common meaning of the term, have repeatedly held that "'an accident is an undesigned contingency, a casualty, a happening by chance, something out of the usual course of things, unusual, fortuitous, not anticipated, and not naturally to be expected.'" *Frankenmuth Mut Ins Co v Masters*, 460 Mich 105, 114; 595 NW2d 832 (1999) (citing cases). The determination whether an accident occurred is viewed from the standpoint of the insured, not the injured party. *Id.* at 115. Here, then, we evaluate the question whether an accident occurred from the standpoint of Carla LaRoche, not Reinhardt.

LaRoche testified at deposition that the push was impulsive, spontaneous, and done without intent to harm Reinhardt. However, LaRoche's lack of intent to cause the harm that resulted is not dispositive. In *Nabozny v Burkhardt*, 461 Mich 471, 477-478; 606 NW2d 639 (2000), the Michigan Supreme Court acknowledged the "difficulty that arises when an intentional act causes unintended consequences," and quoted with approval from Justice

* Circuit judge, sitting on the Court of Appeals by assignment.

Griffin's opinion in *Auto Club Group Ins Co v Marzonie*, 447 Mich 624, 648-649; 527 NW2d 760 (1995): "[W]hen an insured's intentional actions create a direct risk of harm, there can be no liability coverage for any resulting damage or injury, despite the lack of an actual intent to damage or injure." See also *Masters*, *supra* at 116 (finding it "irrelevant" whether the harm that resulted was different from or exceeded the harm intended).

Further, when an insured voluntarily consumes an intoxicating substance, she may not use that consumption to avoid a finding of an intentional act. *Group Ins Co of Michigan v Czopek*, 440 Mich 590, 601; 489 NW2d 444 (1992). Thus, LaRoche's intoxication at the time of the incident does not vitiate or mitigate her intent.

We conclude that LaRoche's act was not accidental because it cannot plausibly be construed as an undesigned contingency or something that happened by chance. *Czopek*, *supra* at 598. Further, even though LaRoche testified that she did not intend to harm Reinhardt, such harm should have been reasonably expected as a result of the forceful contact applied while under the influence of alcohol and narcotics. Given the direct risk of harm created by LaRoche's intentional actions, there was no "occurrence" to trigger liability under the insurance policy.

Affirmed.

/s/ Martim M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker